

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement  
Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690  
(Sept. 22, 2004)) Relating to Confidentiality of  
Information.

Rulemaking 05-06-040  
(Filed June 30, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON PETITIONS TO INTERVENE, REQUEST FOR OFFICIAL NOTICE,  
AND NOTICES OF INTENT TO CLAIM INTERVENOR COMPENSATION**

This ruling grants and denies several petitions, motions and requests pending in this case, as follows:

1. I grant the petitions of the California Energy Commission (CEC) and CALifornians for Renewable Energy, Inc. (CARE), filed on October 4, 2005 and October 6, 2005, respectively, to intervene in this proceeding. I also deny CARE's objection to CEC's petition to intervene.
2. I deny without prejudice the CEC's Request that Official Notice Be Taken (Official Notice Request), filed with its petition to intervene on October 4, 2005. I also deny CARE's Response and Objections to the Official Notice Request, filed on October 17, 2005.
3. I find CARE, The Utility Reform Network (TURN) and the Green Power Institute (Green Power) eligible to seek intervenor compensation in this proceeding.

### **Motions to Intervene**

CEC and CARE may both intervene and participate fully in this proceeding. CEC's participation is appropriate because much of the data that will be addressed in this proceeding is also filed with the CEC as part of its resource planning activities. The CEC has recently developed an extensive record regarding the confidentiality of such data, and has a perspective on the confidentiality issues that will add value to this proceeding. In its objection to CEC's intervention, CARE expresses disagreement with CEC's position on confidentiality. CARE believes the CEC is biased in favor of Energy Service Providers (ESPs) and therefore should not be allowed to participate in this proceeding.

CARE's concerns may be the proper subject of hearing, briefing and comments, but do not justify denial of CEC's petition to intervene. CEC's perspective is useful to this proceeding, and I therefore grant CEC's petition to intervene.

I also grant CARE's petition to intervene. CARE claims to represent low income residential customers of color and native people who reside near power plants. CARE also claims among its membership self-suppliers of photovoltaic electricity. CARE opposes disclosure of Investor-Owned Utilities (IOUs)<sup>1</sup> procurement information to ESPs who compete in the electricity market with the IOUs. CARE's perspective on the matters at issue in this proceeding – confidentiality of procurement data – may be useful, and therefore intervention is appropriate. No party opposes CARE's petition, and I therefore grant it.

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<sup>1</sup> The IOUs at issue in this proceeding are Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas & Electric Company.

### **CEC Official Notice Request**

With its petition to intervene, CEC asked that this Commission take official notice of documents in the CEC record regarding confidentiality of procurement data. On September 28, 2005, I directed CEC's counsel to "make sure your request for official notice is specific about page/line of the items of which you seek official notice and the basis for such notice."<sup>2</sup> CEC did not comply with this requirement, or otherwise discuss the standards for official notice in its request. I therefore deny CEC's Official Notice Request without prejudice to its right to renew the request and make the foregoing showing. I also invite CEC to participate in the hearings scheduled for November 28, 2005 - December 2, 2005.

### **Notices of Intent to Seek Intervenor Compensation**

CARE, Green Power and TURN each filed a Notice of Intent (NOI) to Claim Intervenor Compensation in this proceeding. Pursuant to Pub. Util. Code § 1804(b)(1), this ruling addresses whether these customers will be eligible for awards of compensation.

#### **CARE**

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." The prehearing conference in this proceeding occurred on September 21, 2005. The due date for NOIs was October 21, 2005. CARE filed its NOI on October 6, 2005; therefore, its NOI is timely.

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<sup>2</sup> Email Administrative Law Judge (ALJ) Thomas to CEC's Jennifer Tachera, September 28, 2005, available in the correspondence file for this proceeding.

On October 21, 2005, CARE was deemed eligible to file a request for compensation in a separate proceeding, Application (A.) 05-06-028.<sup>3</sup> ALJ Michelle Cooke noted that CARE's bylaws allow it to engage in the following action:

1. To supply on a nonprofit basis both nonprofessional and professional legal assistance to planning, conservation groups, small business customers, residential customers, small business and residential renewable energy self suppliers, and neighborhood groups, in regards to new energy projects in the State of California.
2. To engage on a nonprofit basis in research and information dissemination with respect to legal rights in a healthy environment by giving legal advice, appearing before administrative bodies, and enforcing environmental laws through court actions.

ALJ Cooke observed that "CARE's bylaws provide for a fairly narrow scope of representation as compared to other organizations ... [eligible] to claim intervenor compensation. In particular, CARE's bylaws limit it to providing assistance to residential customers (among others) regarding 'new energy projects' in California."

This case does not directly concern "new energy projects." It is focused instead on confidentiality issues that may arise in several proceedings related to how energy companies buy, sell and facilitate delivery of electricity. By the same token, some of those underlying proceedings may relate to "new energy projects" such as transmission lines. Moreover, the scoping memo for this

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<sup>3</sup> The ruling on CARE's NOI is available on the Commission's website at <http://www.cpuc.ca.gov/PUBLISHED/RULINGS/50478.htm>.

proceeding states that confidentiality issues related to utility-owned power plants, some of which are new, are within this proceeding's scope. Therefore, I find that CARE's bylaws allow it to participate in this case.

Based on the information described in her October 21, 2005, ruling, I adopt two of ALJ Cooke's other findings with regard to CARE: (1) CARE meets the third definition of customer, as set forth in § 1802(b) because it is an organization authorized by its articles of incorporation to represent the interests of residential consumers; and (2) CARE has demonstrated that it will face a significant financial hardship in this proceeding, as set forth in § 1802(g). I find CARE meets the "significant financial hardship" requirement through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), as it was found eligible for compensation in another proceeding that commenced within one year of this proceeding. Should any party rebut this presumption, CARE is granted leave to furnish evidence of its significant financial hardship within seven business days of the rebuttal filing.

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive.

CARE states that it will fully participate in the proceeding, but does not explain how it will do so except by alluding to a "rate increase" which is irrelevant to this proceeding. This is a proceeding about confidentiality of records. CARE shall supplement its request within seven business days of this ruling by filing/serving a "Supplement to Notice of Intent to Claim Compensation" describing the nature and extent of CARE's proposed participation related to records confidentiality.

CARE estimates the following as potential compensation amounts:

<b>Amount</b>	<b>Description</b>
\$ 40,000	Attorney Fees (100 hours at \$400/hour)
\$ 15,000	Regulatory/Economic Expert Fees (75 hours at \$200/hour)
\$ 30,000	President's and Vice-President's Technical Assistance Fees (200 hours at \$150/hour)
\$ 3,000	Travel, postage, photocopies, telephone
\$ 88,000	<b>Total</b>

Because CARE does not describe the nature and extent of its planned participation, I cannot tell whether these estimates are satisfactory. In the "Supplement to Notice of Intent to Claim Compensation" CARE must file, it shall demonstrate that the nature and extent of its planned participation warrants the foregoing expenditures. Like any intervenor, CARE must fully support its ultimate request for compensation, including substantiating that it has made a substantial contribution, and the reasonableness of the hours spent and hourly rates.

### **Green Power**

Green Power's NOI is timely. As noted above, the prehearing conference occurred on September 21, 2005, and the due date for NOIs was October 21, 2005. Green Power timely filed its NOI on October 17, 2005.

Green Power notes that it has previously been found eligible for intervenor compensation. In a ruling dated August 24, 2005 issued in Rulemaking

(R.) 04-04-025,<sup>4</sup> ALJ Halligan found Green Power eligible for compensation. However, that ruling and the other rulings Green Power cites do not describe how Green Power's articles of incorporation or bylaws authorize it "to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation." (§ 1802(b)(1)(C).) Green Power must meet this requirement (or otherwise show that it is a "customer" pursuant to § 1802(b)(1)) to be eligible for compensation in this proceeding.

Green Power is a program of the Pacific Institute for Studies in Development, Environment and Security (Pacific Institute). The Pacific Institute's bylaws state that its purposes are "to engage in scientific research and provide public education about complex problems threatening the well-being of human society." One of its objectives is "to participate in regulatory and public proceedings by providing information about scientific, technical, and economic implications of public-policy options."

Green Power states that the Pacific Institute has more than 90 members who are California residential customers of the regulated electric utility customers. However, nothing in Green Power's NOI indicates that Green Power is authorized by its articles or bylaws "to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation." (§ 1802(b)(1)(C).) Green Power shall therefore supplement its request within seven business days of this ruling

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<sup>4</sup> The ruling is available at <http://www.cpuc.ca.gov/PUBLISHED/RULINGS/48800.htm>.

by filing/serving a “Supplement to Notice of Intent to Claim Compensation” explaining how it meets the “customer” requirement of § 1802(b)(1).

Green Power meets the requirement of § 1804(a)(2)(A)(i) by including an adequate statement of the nature and extent of its planned participation. Green Power plans to concentrate on public disclosure of data regarding renewables procurement and procurement planning. It expresses a concern about the lack of broad public access to procurement data in the various procurement “umbrella” proceedings identified in the OIR, asserting that such data have been withheld unnecessarily based on claims of confidentiality. It plans to participate in hearings and workshops,<sup>5</sup> prepare testimony, and submit motions and briefs as appropriate.

Green Power estimates the following as its potential compensation amount:

<b>Amount</b>	<b>Description</b>
\$ 28,800	Green Power Director Fees (Dr. Gregory Morris; 120 hours at \$240/hour)

Green Power satisfactorily presents an estimate of the compensation it expects to request pursuant to § 1804(a)(2)(A)(ii), although we will require far more specificity when Green Power ultimately seeks compensation. Moreover,

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<sup>5</sup> No workshops are currently planned in this proceeding. Green Power and the other intervenors who filed NOIs shall not bill time related to other procurement “umbrella” proceedings to this case, but rather shall segregate their billing records appropriately to avoid double counting.

the number of hours and the hourly rates may be excessive and, as must any intervenor, Green Power must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

### **TURN**

TURN's NOI is also timely, as it was filed on the October 21, 2005 due date.

TURN is a Category 3 customer as it is an organization, as described in § 1802(b)(1)(C), authorized pursuant to its bylaws to represent the interests of its members, many of whom are residential ratepayers.

TURN is entitled to the benefit of a rebuttable presumption that it will endure significant financial hardship pursuant to §1804(b)(1), as it was found eligible for compensation in another proceeding that commenced within one year of this proceeding. TURN received a finding of significant financial hardship in a ruling issued by ALJ Wetzell in R.04-04-003, dated July 27, 2004.<sup>6</sup> This proceeding commenced within one year of that date, on June 30, 2005. Should any party rebut this presumption, TURN is granted leave to furnish evidence of its significant financial hardship within seven business days of the rebuttal filing.

TURN also provides a description of the nature and extent of its planned participation, as required by § 1802(a)(2)(A)(i). TURN states that its concerns relate to the appropriate balance between the need for a transparent, public process and the importance of maintaining the confidentiality of market-

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<sup>6</sup> ALJ Wetzell's ruling is available at <http://www.cpuc.ca.gov/PUBLISHED/RULINGS/38377.htm>.

sensitive materials that could provide sellers of electricity with an unfair advantage in negotiations with entities purchasing on behalf of retail customers. TURN plans to present testimony, participate in hearings and submit briefs. TURN has made an adequate showing of its planned participation.

CARE estimates the following as potential compensation amounts:

<b>Amount</b>	<b>Description</b>
\$ 16,000	Attorney Fees (Matthew Freedman; 50 hours at \$320/hour)
\$ 8,700	Attorney Fees (Robert Finkelstein; 20 hours at \$435/hour)
\$ 24,500	Attorney Fees (Michael Florio; 50 hours at \$490/hour)
\$ 5,000	Fees for Kevin Woodruff (25 hours at \$200/hour)
\$ 10,500	Expert Witness Fees (William B. Marcus; 50 hours at \$210/hour)
\$ 64,700	<b>Total</b>

TURN satisfactorily presents an itemized estimate of the compensation it expects to request, although we will require far more specificity when TURN ultimately seeks compensation. Moreover, the number of hours and the hourly rates may be excessive and, as must any intervenor, TURN must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

**IT IS RULED** that:

1. The California Energy Commission's (CEC) petition to intervene is granted.

2. Californians for Renewable Energy, Inc.'s (CARE) petition to intervene is granted.

3. The CEC's request for official notice is denied without prejudice. If CEC renews its motion, it shall itemize the pages/lines of the items of which it seeks official notice and provide in detail the legal basis for such official notice, by item.

4. CARE has met the eligibility requirements of Pub. Util. Code § 1804(a). CARE is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized to represent the interests of residential ratepayers.

5. CARE has established by rebuttable presumption that it will face a significant financial hardship in this proceeding, as set forth in § 1802(g). Should any party rebut this presumption, CARE is granted leave to furnish evidence of its significant financial hardship within seven business days of the rebuttal filing.

6. CARE shall supplement its NOI within seven business days of this ruling by filing/serving a "Supplement to Notice of Intent to Claim Compensation" describing the nature and extent of CARE's proposed participation related to records confidentiality.

7. Green Power Institute (Green Power) has not fully met the eligibility requirements of Pub. Util. Code § 1804(a). Green Power shall supplement its request within seven business days of this ruling by filing/serving a "Supplement to Notice of Intent to Claim Compensation" explaining how it meets the "customer" requirement of § 1802(b)(1).

8. Green Power has established by rebuttable presumption that it will face a significant financial hardship in this proceeding, as set forth in § 1802(g). Should any party rebut this presumption, Green Power is granted leave to furnish

evidence of its significant financial hardship within seven business days of the rebuttal filing.

9. The Utility Reform Network (TURN) has met the eligibility requirements of Pub. Util. Code § 1804(a). TURN is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized to represent the interests of residential ratepayers.

10. TURN has established by rebuttable presumption that it will face a significant financial hardship in this proceeding, as set forth in § 1802(g). Should any party rebut this presumption, TURN is granted leave to furnish evidence of its significant financial hardship within seven business days of the rebuttal filing.

11. A finding of eligibility to seek intervenor compensation in no way assures compensation.

12. The intervenors who filed Notices of Intent addressed in this ruling shall not bill time related to other procurement “umbrella” proceedings to this case, but rather shall segregate their billing records appropriately to avoid double counting.

Dated November 22, 2005, at San Francisco, California.

/s/ SARAH R. THOMAS by tcg  
Sarah R. Thomas  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Petitions to Intervene, Request for Official Notice, and Notices of Intent to Claim Intervenor Compensation on all parties of record in this proceeding or their attorneys of record.

Dated November 22, 2005, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.